Future Broadband – policy approach to next generation access

BUSINESS IMPACT STATEMENT

Enterprises of all sizes and in all sectors have long depended on reliable, effective connection to communications services. In the past such connectivity commonly meant broadband, via leased lines but, now and in the near future, increasingly via DSL. However, DSL technology is neither reliable nor future-proof in terms of the bandwidth it can offer. In the medium to long term a very much better solution must be found. Meanwhile, our competitors in other countries are beginning to enjoy competitive advantages based on affordable, reliable access to bandwidth.

Big business represents a very large part of the market and accounts for a significant part of suppliers' revenues. Unless enterprises of all sizes have unrestricted access to real, symmetrical broadband – ie: fibre – supply chains will congest, UKplc will be unable to compete effectively for inward investment and our knowledge economy will stall.

"It's time to move beyond the debate of whether we need a national broadband policy. We do. The task now is to craft it and implement it."
("The case for a National Broadband Policy" June 2007. Paper by Robert D Atkinson, former Chief Economist at the FCC - http://www.itif.org/files/CaseForNationalBroadbandPolicy.pdf)

Summary

The consultation strives so hard to be neutral that it's in danger of bringing about the condition that it should be seeking to avoid – a major economy damaged by the lack of a broadband infrastructure. The Executive Summary proclaims (1.9): "We do not yet see evidence that the UK will be significantly disadvantaged economically or socially as a result." One CMA member – representing a large multinational - challenges this with: "UK infrastructure is already behind and it is an economic disadvantage. One of the largest multinational IT service companies when presenting recently told us that they used ADSL for flexible working in France and Germany and it was fine even for video conferencing to the home. In the UK however they found the infrastructure was too poor to support it reliably. Use of ADSL for remote site connection in the UK is only possible when extended outages can be tolerated, so it is effectively excluded for many business applications and customers are forced to use more costly private circuits."

Ofcom's hesitancy is strikingly out of kilter with recent statements by government Ministers and others.

The choice of words in the Foreword: "As part of our statutory duties, we are required to give regard to the desirability of encouraging the availability and use of high speed networks", seems to be an accurate reflection of a General Duty under 3(4)(e) of the Communications Act. However, in its own interpretation of its "specific duties" under the Act, (http://www.ofcom.org.uk/about/sdrp/): Ofcom lists the second such duty as: "Ensuring that a wide range of electronic communications services - including high speed data services - is available throughout the UK."

"….required to give regard to the desirability of encouraging…." seems to us to be a very long way from "ensuring".

Regarding claims such as: "…. over 52% of households in the UK have broadband,…." and: "… the average headline speed…….is 4.6Mbps…" we show,

with two current examples, that there is far more room for disparity and dissent between statistical sources than allows valid comparisons and this situation is no basis for policy-making.

We assert that while there was a range of competing (broadband) technologies to choose from it was easy for a regulator to cling to policies based on technology neutrality and infrastructure competition. However, none of these technologies can be considered fit for future purpose, save pt to pt FTTH. The range of options has narrowed to just one and it is becoming increasingly difficult to accept the argument that infrastructure competition and technology neutrality should still play central roles in regulatory policy for NGA.

In consequence it's been hard to find points of constructive criticism and this response is more robust than is usual for CMA.

Response to Question 1 - *When do you consider it would be timely and efficient for next generation access investment to take place in the UK?*
By 2012 enterprise consumers will be experiencing the benefits of fibre access in several other EU Member States but, because of the UK's unwillingness or inability to invest now, UK-based enterprises will be denied access to seamless services that their competitors enjoy until well into the next decade. CMA is surveying its members in an attempt to obtain the sort of evidence of demand that Ofcom says is lacking. It is expected that the analysed results will be available in February 2008.

Response to Question 2 - *Do you agree with the principles outlined for regulating next generation access?*
No. Principles of universal access must be applied to ensure that geographical asymmetry (in the availability and price of broadband-dependent services) does not develop.

Response to Question 3 - *How should Ofcom reflect risk in regulated access terms?*
CMA suggests that Ofcom should retreat from its insistence on "infrastructure competition at all costs" and take a more pragmatic view. We do not go so far as to suggest that the access network is a natural monopoly, but now that the UK has a working Equivalence of Input business model we believe that BT should be encouraged to invest in an open access pt-to-pt FTTH programme within a national, universal access philosophy.

Response to question 4 - *Do you agree with the need for both passive and active access remedies to promote competition?*
No – the regulatory effort in promoting competition in passive access, and the costs involved, don't justify that approach. Ofcom should focus on active line access based on a pt-to-pt fibre infrastructure.

Response to Question 5 - *Do you consider there to be a role of direct regulatory or public policy intervention to create artificial (sic) incentives for earlier investment in next generation access?*
Yes – every public body other, it seems, than Ofcom recognises that the market, left to itself, will not come to a "timely" decision to invest (timely from the point of view of UK plc, not from the viewpoint of the investor) and that the moment has come for a more proactive stance from government with clearer direction to their regulator.

General

This consultation, together with the earlier discussion document, has presented the issues exhaustively and clearly.

However, there is a significant and worrying disconnect between the promise and vision of recent speeches by two government Ministers on the need for a fibre future (fired, perhaps, by the BSG's Pipe Dreams report) and the cautious approach taken by Ofcom. The process of translating political conviction into the practical business of investing public treasure is probably not the way to go for an independent regulator: nevertheless, lack of conviction in the face of bodies of evidence and growing public clamour is not the most compelling of approaches to the investment issue by the custodian of citizen interests.

On 5th October, Lord Sainsbury's review of UK science and innovation was endorsed by the Prime Minister. (http://www.hm-treasury.gov.uk/media/5/E/sainsbury_review051007.pdf). Some quotations are strikingly different from Ofcom's proposition that the UK's best interests will be best served by delaying investment:

> "Demand-side factors, such as procurement and regulation, which can play a critical role in encouraging innovation, have received too little government focus. The Review shows that value for money and innovation can be complementary objectives in government procurement and urges government departments and the economic regulators to engage in emerging technology development in collaboration with the TSB. (Exec Summary)
>
> "…….the Government must provide the essential public goods required for success in a dynamic and innovative knowledge economy that will enable us to compete against low-wage countries like India and China. This means comparing all parts of our innovation ecosystem against other leading countries. (Exec Summary)
>
> **"1.8** First, improvements in communications and transport technologies have significantly lowered the cost of moving information, goods and services across long distances (Chart 1.1), making global operations easier and faster. Technological advances in communications systems and falling costs of communication have facilitated global transactions and improved information flows, enabling the fragmentation of global manufacturing chains. Software programming, call centre services, back-office operations, medical transcription, legal and accounting services can all be provided remotely from other countries through increasingly efficient information and communications technologies. This is a two-way flow of goods and services: it provides new sources of imports and new markets for exports. The UK benefits from both flows. Business is able to restructure production, taking advantage of the opportunities being offered in emerging economies to reduce costs, while the same technological breakthroughs create the means to access new markets and to export increased numbers of high-value goods and services.
>
> **"1.28** The best strategy for the UK and other developed countries is to recognise that we have a comparative advantage in knowledge-intensive industries, and to continue to build a strategy based on openness, flexibility and investment in knowledge and skills that enhances our comparative advantage. This strategy will lead to a better response to globalisation than would protectionism and fear of change and will enable companies to produce

> more knowledge-intensive goods and services and move more quickly into the new knowledge-intensive industries. Companies translate new ideas into new products and services, or new processes and production methods and it is support for this innovation that will help boost productivity and standards of living."

Ofcom's repetitive and defensive use of the phrase "timely and efficient investment" doesn't chime with the underlying urgency expressed either by Sainsbury or in Pipe Dreams – "efficient" is normally taken to indicate commitment of the minimum resources necessary to achieve the desired goal. It does not justify the argument that the process of investment should be deferred until risk has been eliminated. Unlike the Framework Directive, the Communications Act does not qualify investment by "efficient". (However, we recognise that efficient investment is elsewhere an objective of both EU and UK law).

Ofcom's goals of "creativity, responsiveness and effectiveness" can be achieved only by accepting that creativity is the opposite of the default condition of minimising risk.

There seems to be a discontinuity between the second of Ofcom's specific duties under the Communications Act as interpreted on its website at http://www.ofcom.org.uk/about/sdrp/, and the wording in the Foreword to the consultation. The website reads:

> "Ensuring that a wide range of electronic communications services - including high speed data services - is available throughout the UK"

That strikes us as a wholly admirable sentiment. It is therefore disappointing to learn that the vague wording of the Foreword is based on the equally vague, legal injunction at 3(4)(e) of the Act itself. The Foreword reads:

> "We think that Ofcom has a key role to play. As part of our statutory duties, we are required to give regard to the desirability of encouraging the availability and use of high speed networks."

"We think" and *"….to give regard to the desirability of encouraging…"* is phraseology that is entirely at odds with the ordinary English meaning of "specific duty" to "ensure".

Across the Atlantic we find: "The 1996 Telecommunications Act massively deregulated the telecommunications industry in the United States, but even so, the FCC was instructed to regularly 'initiate a notice of inquiry to determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion ... If the commission's determination is negative, it should take immediate action to accelerate deployment of such capability by removing barriers to infrastructure, investment, and by promoting competition in the telecommunications market.'" Perhaps the primary need in the UK is not so much to find incentives to the industry to invest, but to find incentives for Ofcom to comply with its own unequivocal interpretation of its duty in this area.

Section 2 – Introduction

The over-cautious approach taken by the document is reflected in para 2.8:

> Next generation access network deployments may in time offer further scope for development, innovation and economic gains. They will support faster

> access than current generation broadband services and could facilitate the development of new products and services that may further drive competitiveness and productivity. It is these prospects that have made next generation access developments a topic of increasing debate in the past 12 months.

And in 2.9:

> ……. For competitors and new entrants, these networks may result in changes to the wholesale products and services they can purchase. For service and application providers, these networks may result in a change to the way customers consume services or the business models adopted for service delivery. And for consumers and businesses, these networks may offer access to a range of new and innovative services at new pricing points.

And in 2.25:

> We also have a role to play in facilitating and participating in a wider debate on the public policy and economic implications of next generation access. The movement to next generation access may well be (a) fundamental facilitator for developments in the economy and society.

Given that BT is providing indicative QoS pricing to be based on the new platform and enterprises are actually waiting to deploy the new Ethernet products - dependent on 21CN -, for Ofcom to say that: "these networks may result in changes to the wholesale products and services they can purchase" is hardly reassuring. If NGNs fail to deliver new products and offer scope for further development then the shareholders of the multiple CPs deploying them should be asking a few searching questions.

It is disturbing that Ofcom – presumably a well resourced and well informed organisation - should advertise its lack of conviction with the use of such conditional terminology so early in the document. It deters reading past this point: it is obvious that Ofcom's conclusions are going to be drearily vision-free. The lack of thought leadership of 2.25 is particularly damning: Ofcom must contain the only body of economists in the developed world that is unwilling even to admit that next generation access is likely to be a fundamental facilitator for developments in the economy and society.

However, there is one bright spot: 2.28 is unusually declarative:

> "We believe next generation access networks have the potential to play a very important role in the future of UK telecoms. When deployed, they will shape the telecoms market and its implications for consumers and the economy for many years to come."

Brilliant! Would that the rest of the document was based on such a Nicenean declaration.

2.24 seems to suggest that a competitive environment is to be encouraged only after investment has been secured. It would seem logical, if regulatory uncertainty is to be reduced, to promote competition in services as an integral and positive element of an investment policy and not as an afterthought.

2.26, in referring to the digital divide and the probable lack of universal access to broadband under the current regime, ignores the strictures of the Universal Service Order 2003. The Schedule to the current Order says:

> (1) At least one designated universal service provider shall meet all reasonable requests by end-users for connection at a fixed location to the public telephone network and for access to publicly available telephone services at a fixed location.
>
> (2) The connection referred to in sub-paragraph (1) shall be capable of allowing end-users to make and receive local, national and international telephone calls, facsimile communications and data communications, at data rates that are sufficient to permit functional Internet access, ***taking into account prevailing technologies used by the majority of subscribers and technological feasibility.***

Ofcom's own statistics show that the prevailing technology is now always-on broadband (52% of households "have broadband" - Communications Market Review 2007) and the evidence that the technology is feasible is all around us. Para 2.26 goes on to say:

> "It is appropriate for Ofcom to consider the degree to which such areas may be disadvantaged as a result of having no access to next generation services, and what the appropriate policy responses may be. However, it may be premature at this stage to consider specific policy options in advance of announced next generation access deployments even in those areas where we could reasonably expect the market to deliver."

It is not merely appropriate for Ofcom to consider its policy responses; it is a specific duty, not only under the 2003 Order but also as one of those specified under the Act itself. While a policy of wait-and-see might be justified in some circumstances it is indefensible to imply that no action will be forthcoming until such time as the market has made up its mind. The underlying Universal Service Directive owes its very existence to the inadequacies of the market in serving the needs of the citizen-consumer. Ofcom should at least acknowledge its role in applying the basic tenets of the USO in a prevailing broadband environment. 2.26 fails in that respect.

2.31 is a very welcome (albeit limited) recognition that the communications market includes larger businesses. We welcome in particular the reference to connectivity requirements for satellite offices and remote workers and would add that there is now a widespread need to reduce business continuity risk by planning to disperse staff when disruptive conditions arise. We also must not ignore the growing fashion for green policies that encourage employees to work from home. These trends are part of the evidence for demand for broadband in the access network.

2.31 would be more powerful, however, were it to acknowledge the factors recognised in the Sainsbury Review of 5 October as being critical to the future economic health and wellbeing of the UK. The use of the conditional is again disappointing – "However, these mass market deployments may still have implications for larger businesses…" We would prefer to see: "….will have implications…" and we are surprised that Ofcom is showing such little confidence in the future of our national economy.

Section 3 – The Broader Context

In a negative document perhaps the most depressing knuckling under to the status quo is in 3.13. It is not until we get to Section 7 that we see any attempt to counterbalance the preconceived notion that the UK is best advised to sit on its hands until such time as the time is (somehow seen to be) right. Even then, Section 7 is loaded with buts and howevers, together with large helpings of that impotent and debilitating reminder of the need for "timely and efficient" investment. Yet Pipe Dreams is a rich source of ammunition for the urgent need to invest. We have a right to expect Ofcom to tell us, in a neutral and unbiased fashion, why fibre is right for the UK: not to dwell on the successes of others and extrapolate these to provide justification for our lack of action.

3.14 doesn't recognise the probable impact of HDTV on demand for spectrum – there isn't enough to satisfy the demands of the terrestrial broadcast sector. 3.19 follows suit by ignoring the probable strain on DTTV and the concomitant demand for capacity on our DSL infrastructure. The 2012 Olympics will be the trigger; a consequence that is likely to have political fallout.

3.25 is not fully understood – it seems to warn that contention on backhaul will have greater impact, and be harder to resolve, than any access bottleneck. Yet backhaul is now (universally?) fibre and increasing its capacity is not, or ought not to be, a really significant factor.

Response to Question 1 - *When do you consider it would be timely and efficient for next generation access investment to take place in the UK?*

Efficiency is often the natural enemy of effectiveness. CMA subscribes to the conclusions reached in Pipe Dreams. Unless we begin now we won't have enough fibre in the ground to compensate for the shortfalls in DTTV coverage in 2012. However, that is a primarily a consumer concern and not one that is at the forefront of the enterprise consumer's mind. By 2012 the latter will be experiencing the benefits of fibre access in several other EU Member States but, because of the UK's unwillingness or inability to invest now, UK-based enterprises will be denied access to seamless services that their competitors enjoy until well into the next decade. The Sainsbury Review focuses on this and related issues. Ofcom should focus not on whether the time is right for fibre, but on how the creation of a new access monopoly can be avoided.

CMA is surveying its members in an attempt to obtain the sort of evidence of demand that Ofcom says is lacking. It is expected that the analysed results will be available in February 2008.

Section 4 – Regulatory Concerns

4.27 weaves in and out of the USO without once mentioning it by name. CMA would welcome the introduction of regional variations in regulatory policy, including differential pricing, but only insofar as they had the overall effect of evening out competitive advantages that were due solely to location. Otherwise, the impact on rural communities could be severe because of lower speeds and higher prices. We do not wish to see businesses having to relocate (in order to protect their competitive position) from an over-priced, under-speed area to one that offers better products and services.

We would prefer to see regulatory policies that ensured that non-infrastructure ISPs were not disadvantaged in offering services to rural areas.

Response to Question 2 - *Do you agree with the principles outlined for regulating next generation access?*

No. Principles of universal access must be applied to ensure that geographical asymmetry (in the availability and price of broadband-dependent services) does not develop. Moreover, large enterprises continue to express concern that Openreach must address issues around SLAs\SLGs and their impact on end users. Unless this is done we can look forward to a continuation of missed SLA targets and OTA improvement plans that fail to deliver.

Section 5 – Securing Investment

With regard to benefits arising from "contestable" investment, the second bullet point in 5.8 reads:

> "• ensuring that competitors are not precluded from making investments in next generation access after operators with significant market power have deployed their own infrastructure. This will result in an environment that allows greater competition where the economics support more than one infrastructure deployment. ……."

Given that the document focuses on FTTC and FTTH solutions, this benefit seems hard to justify. It is unreasonable to expect streets to be dug up twice, and we will probably have to accept, reluctantly, the continuation of a de facto local monopoly in non-urban areas of the UK. This leads to the assessment of 5.10:

> "However, there is also a risk that regulatory policy focussed on contestability actually results in inefficient investments by some operators that seek to foreclose the risk of new competition. Such inefficiency may take the form of selecting a specific technology that precludes the risk of competition through contestable investments.
> One such risk could arise from a regulatory approach that sought to promote contestability in next generation access through sub-loop unbundling. For example, there may be circumstances where, given the risk of competition to a significant market power operator from competitors investing in sub-loop unbundling, it may respond by inefficiently choosing to invest in pt-to-pt FTTH technologies that may be more difficult to unbundle, and therefore reducing contestability. We need to remain alive to the risk of any such anti-competitive behaviour."

While there was a range of competing (broadband) technologies to choose from it was easy for a regulator to cling to policies based on technology neutrality and infrastructure competition. However, technology neutrality and infrastructure competition are not concepts that should be expected to survive in perpetuity: history is not a smooth continuum and the arrival of pt-to-pt fibre is one of those unique, disruptive events that cause an upheaval in belief. None of the existing technologies can be considered fit for future purpose, save pt to pt FTTH. The range of options has narrowed to just one and it is becoming increasingly difficult to maintain the argument that infrastructure competition should still occupy an important place in regulatory policy. It is beginning to distort potential benefits to consumers. For example, in the situation of 5.10 and in an NGN/NGA era where effective functional separation is also mandated, real, relevant competition takes place at the retail level

and is facilitated by separation of intelligence from transport. It can be argued that unbundling is yesterday's concept and the incumbent should be positively encouraged to roll out open, active access, pt-to-pt FTTH, in the long-term interests of the citizen-consumer and UK plc.

5.24 proposes to allow price differentiation across consumers or (sic) service levels. It contains the sentence:

> "……..The reason for this is that the total value derived from next generation access networks is the sum of different valuations by different end users – some will value next generation access services highly while others may value it only marginally more than services delivered over existing access networks."

Where the price of broadband access is set by an "investor" to reflect population density and/or topographical features this statement reflects the "take it or leave it" sales approach. Price differentiation between service levels is acceptable only in conditions of effective competition or of mandated network neutrality. Price differentiation between consumers, based on where they live or work, is an unattractive concept and could even violate the principles of the USO.

5.29 takes up the USO consideration and introduces the notion of anchor products – presumably voice and broadband access. CMA would like to know more about the implications of this approach. The third bullet seems to depress hopes of future price cuts:

> "• prices are not cost based since those prices that are controlled are set on the basis of prices on the previous platform (with a different cost structure)"

5.32 reinforces fears that the NGN "cost-dividend" won't materialise. Consumers were rather hoping that some of the huge cost savings resulting from the move to 21CN would be passed on!

Response to Question 3 - *How should Ofcom reflect risk in regulated access terms?*

CMA suggests that Ofcom should retreat from its insistence on "infrastructure competition at all costs" and take a more pragmatic view of technology neutrality. We have an increasingly effective approach to functional separation and we are en route to an NGN core. Unbundling will soon lose its position as a major regulatory tool. Placing real restrictions on the incumbent's ability to deploy pt-to-pt FTTH because of outdated concepts is not in the best interests of the consumer. We do not go so far as to embrace the concept that the access network is a natural (historic) monopoly, but we believe that BT should be encouraged to invest in an open access pt-to-pt FTTH programme within a national, universal access philosophy.

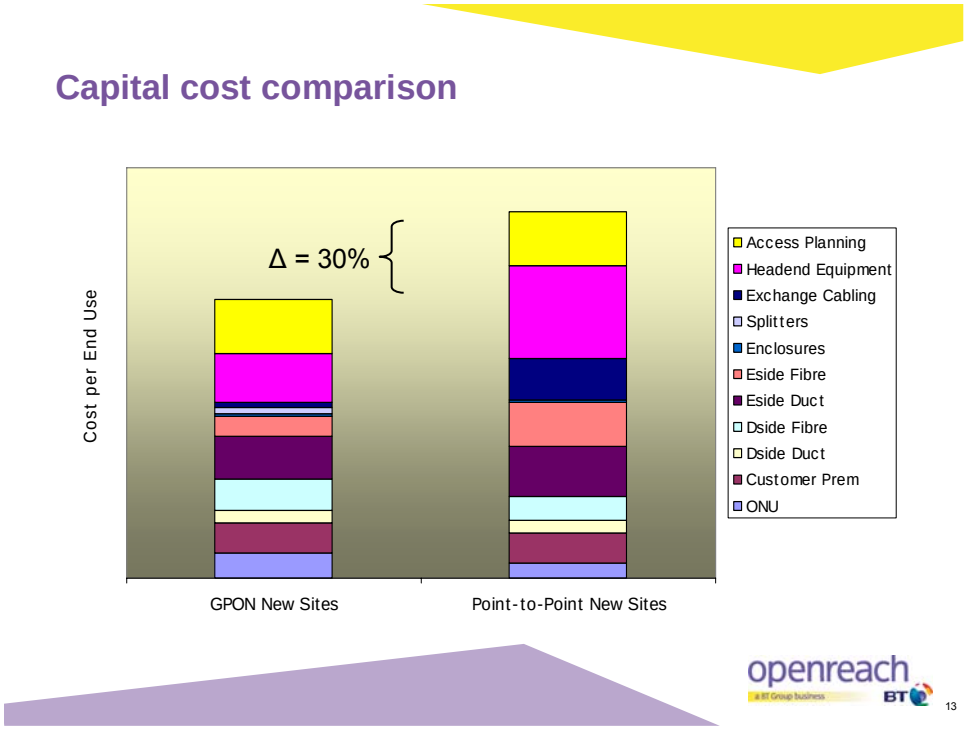
Section 6 - Promoting competition in next generation access

6.56 reads:

> "Most operators in Europe are expected to base any FTTH deployments on GPON technology, as evidenced by BT's proposals for its new build fibre build in the Ebbsfleet housing development. With no clear option to physically unbundle a PON at the moment, and if the practical problems of duct access were to continue, viable competition in the proposed FTTH deployments will be likely to come from active inputs e.g. an active line access product. This

places even greater emphasis on the need for a high quality, highly configurable product that offers third party communications providers a significant degree of control over the underlying infrastructure."

CMA is unhappy with the acceptance of GPON as the immediate way ahead. Just as with leased lines, ISDN and DSL, GPON is not the long-term answer, even with "super-PON" TDM/DWDM enhancements, and there some unanswered regulatory issues, such as the difficulty of unbundling PON. Only pt-to-pt FTTH offers the sort of future proofing that the rate of development in bandwidth-hungry content and applications suggests will be needed. Given that Openreach has estimated the cost difference between GPON and pt-to-pt FTTH at Ebbsfleet is of the order of 30%, (see Fig below) this is not a huge commitment. (An independent report from IDATE puts the difference at only 8%). Pipe Dreams quotes a figure of £15Bn for a national pt-to-pt FTTH programme – rather less than the sum paid by the MNOs for their 3G licences and a sum comparable with the cost of Crossrail and (almost certainly) the cost of the 2012 Olympics. Yet the returns in the form of public good arising from a pt-to-pt FTTH programme would be immeasurably greater and far more enduring than either of these two projects.



If one accepts that point-to-point FTTH is the only technology that will give virtually unlimited bandwidth over the next few decades, then it is hard to understand why the condoc focuses on how investment in GPON can be encouraged, and how all the regulatory issues that flow from GPON might be addressed. In this case we fear that the good is the enemy of the best

Response to question 4 - *Do you agree with the need for both passive and active access remedies to promote competition?*

No – the regulatory effort in promoting competition in passive access, and the costs involved, don't justify that approach. Ofcom should focus on active line access based on a pt-to-pt fibre infrastructure.

Section 7 - The case for direct intervention in next generation access investment

7.24 reads:

> "However, any move to accelerate the deployment of next generation access networks through either regulatory or public policy intervention would require a significant threshold in terms of the evidence on the potential social and economic benefits. The evidence to support such activity is currently limited and this is likely to continue until next generation access networks are more established."

Use of the phrase: "would require a significant threshold in terms of the evidence on the potential social and economic benefits" is merely an assertion and is contestable. The Sainsbury Review, as endorsed by the Prime Minister and referred to above, certainly doesn't take the Ofcom line. In the light of Sainsbury, 7.25 is even more surprising:

> "Whilst the business case for wide scale next generation access networks may only exist for the delivery of mass market services to residential consumers, it may be small to medium sized enterprises (SMEs) that are the real beneficiaries of such a deployment in terms of economic value. Given the lack of current direct evidence on the economic benefits, we will instead examine the potential benefits for SMEs in more detail."

CMA robustly refutes this interpretation. Big business represents a very large part of the market and accounts for a significant part of suppliers' revenues. Unless enterprises of all sizes have unrestricted access to real, symmetrical broadband – ie: fibre – supply chains will congest, UKplc will be unable to compete effectively for inward investment and our knowledge economy will stall.

7.30's claim that:

> "As a result, the impact of next generation access network deployment on productivity of UK companies remains uncertain"

is dangerous nonsense. It has no place in a serious document that will likely drive regulatory access policy for the next decade or so and should be retracted.

7.38 deals with the downside of regulatory intervention:

> "The downside of any form of direct regulatory intervention is that it risks resulting in inefficient levels of investment, timing of investment and technology choice. It considers investment as a goal in itself rather than as an input to deliver consumer, citizen or economic benefits. It breaks the link between consumer demand and investment; in effect, the regulator is deciding or influencing decisions on the correct level and timing of investment."

The regulator does this all the time: it can't avoid influencing the sector. The 3G auctions, the digital dividend, the reluctance to provide operating spectrum to mobile WiMax innovators and the TSR are all recent examples of regulatory influence on

technology choice and investment. They have all, to varying degree, "broken the link" between demand and investment. There is a difference, however, between "deciding" and "influencing" and in NGA terms the need for Ofcom to exercise influence in favour of pt-to-pt FTTH is very strong. Indeed, were Ofcom not to exercise such influence it seems certain that the market will take the short term decision to adopt a PON solution, in which case we will all be back here by 2020, wringing our hands and asking very similar questions.

7.48 addresses the lack of broadband data. We have challenged many times the validity of BT's statistics, which appear to serve the interests of the company rather than the objective of forming a basis for sound regulatory policy. There are still no independently audited figures for the reach of broadband in the UK.

One example of this comes from the Information Technology Innovation Foundation report of 2 October 2007:

> "Most EU countries, including Slovakia, Hungary, Poland and Holland, have significantly faster speeds than Britain. Finland was found to have the highest average broadband speed at 21.7 Mb/second, followed closely by Sweden with 18.2 Mb/second. The UK has an average internet connection of 2.5 Mb/second."

The ITIF research contrasts sharply with Ofcom's claim that the UK has an average speed of 4.6 Mb/second.

Another example is the claim at 1.4 that:

> "Today, over 52% of households in the UK have broadband,….".

However, according to the EU's Communications Committee Working Document "Broadband access in the EU: situation at 1 July 2007" (COCOM07-50 Final, 15 Oct 07):

> "In the best performing countries – Denmark (37.2%) and The Netherlands (33.1%) – roughly one third or more of the population has broadband, with a substantial proportion using an infrastructure other than the incumbents…." (The actual figure given for the UK is 23.8% - 7th in the EU league table)

And:

> "....The Commission regularly reports on the development of broadband markets in the EU with the data validated by Member States via the Communications Committee."

In these examples it doesn't matter who is right – the point is that there is far more room for disparity and dissent between statistical sources than allows valid comparisons and this situation is no basis for policy-making.

CMA, with the assistance and support of BCS, is undertaking a full and accurate survey of the demand among business users for broadband. The findings will contribute to and form part of the extended work programme of the BSG, post Pipe Dreams.

Response to Question 5 - *Do you consider there to be a role of direct regulatory or public policy intervention to create artificial (sic) incentives for earlier investment in next generation access?*

The use of "artificial" hints at preconception. Incentives are surely always real. If a proposal is not an incentive for action then it is either false or it is a disincentive.

The answer to the question is: "Yes – there is a need for incentives." Not only because of Pipe Dreams, nor that the Secretary of State, DCMS has said that we need fibre, nor that the Competitiveness Minister has decided to investigate the mode of intervention, nor that Lord Sainsbury has pointed to the need for better infrastructure, but also because every public body other, it seems, than Ofcom recognises that the market, left to itself, will not come to a "timely" decision to invest (timely from the point of view of UK plc, not from the viewpoint of the investor) and that the moment has come for a more proactive policy stance from government and clearer direction to their regulator.

Section 8 - Implications for existing regulation

No comment

Section 9 - Next generation access and new build premises

9.8, talking about Ebbsfleet, says:

> "However, the importance of these developments is not just around the total number of homes passed: it will be the first time that a next generation access network has been built on any scale in the UK. As such, these developments offer the chance to trial technologies and business models, develop applications, and demonstrate the feasibility of the next generation access to the home as a platform."

We agree with the underlying sentiments and, together with everyone else, are watching Ebbsfleet with considerable interest. The choice of universal GPON, however, is restrictive, and the decision to throttle contended access to 10Mb down and 2Mb up is also unfortunate if the full benefits of the initiative are to be realised by 2012 (when all 10,000 homes should have been completed). We would have hoped that part of the project would test how pt-to-pt FTTH can be deployed on a large scale, revealing how costs might be contained and duct and other problems solved. Leaving the decision entirely to industry, as 9.14 proposes, is not necessarily the right decision in the context of the Cabling of Britain.

CMA awaits with interest Ofcom's imminent consultation on new-build fibre. (9.22)

The fourth bullet in 9.17 explicitly reflects, for the first time in the document, on the impact of the USO:

> "• **universal service obligation** – BT is the universal service provider for the UK, and is required to ensure that basic fixed line services are available across the UK. Consideration needs to be given to how specific requirements relating to universal service will evolve following next generation access deployment"

Indeed. To us that seems to lie at the heart of the access issue. But that, and a further bland acknowledgement at 9.32, is all the document has to say about the impact of the USO, and even then it implies that the NGA will impact on the USO and not on how the requirements for universal service, as mandated by the upcoming revisions to the existing Directive, will affect regulatory decisions on the NGA.

Unless, that is, Ofcom knows more about the content of the Commission's forthcoming Green Paper than we do……

We have already pointed out that Ofcom carries responsibility, under the Communications Act and the Universal Service Order, for deciding the detail of what is meant by "basic fixed line services" and policing the existing terms of universal service.

CMA believes that it is no longer very useful to discuss universal service and that a proactive approach to universal access would be more helpful to consumers – and to the nation.

At 9.36 the document acknowledges the importance of consumer involvement with new and strange technology:

> "We believe it is imperative that the building developer and Openreach work with third party communications providers to ensure that people who buy properties in the Ebbsfleet development are fully aware of the service differences in Ebbsfleet at the time of purchasing their homes."

However, we are concerned that the developer and Openreach, between them, don't fully appreciate the inability of even reasonably tech-savvy consumers to diagnose system faults. When the Ebbsfleet cupboard-under-the-stairs fails to deliver, say, incoming email, the householder will be faced with the problem of whom to call, LandSec, Openreach, ARUP or his ISP. The scope for other-end-itis seems to be considerable and there is a strong case for a one-stop-shop agreement between suppliers to offer on-site support to residents. It's all about consumer protection in this new era.

Section 10 – Next Steps

CMA looks forward to an invitation from Ofcom to discuss these issues on a bilateral basis. We believe we have a positive contribution to make before Ofcom issues its Spring statement on NGA.

CMA November 2007

Footnote - CMA's Internal Consultation Process on Regulatory Issues

Any consultation document (condoc) received by or notified to CMA is analysed initially by the appropriate Forum Leader for its relevance to business users based in the UK. (The majority of CMA's members are based in this country, with a third of them having responsibility for their employers' international networks and systems).

If the document is considered to be relevant to CMA, it is passed, with initial comments, to members of both the appropriate Forum and the 20 or so members of CMA's "Regulatory College" – ie: those members who have experience in regulatory issues, either with their current employer, or previously with a supplier. The CMA Chairman and CEO are also members of the College. The detailed comments from the College are collated by the Forum Leader in the form of a draft response to the condoc. Note: if the condoc has significant international import, the views of the international user community are likely to be sought. This is done through the International Telecoms User Group (INTUG).

The draft response is sent to all 1500+ user members of the Association, with a request for comment. Comments received are used to modify the initial draft. The final version is cleared with members of the appropriate Forum and Regulatory College (and, if the subject of the consultation is sufficiently weighty, with the CMA Board).

The cleared response is sent by the CMA Secretariat to the originating authority. It might be signed off by the Leader of CMA's Regulatory Forum, and/or by the CMA Chief Executive and Chairman.